for The Defense

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The Training Newsletter for the Maricopa County Public Defender's Office ⋈ Dean Trebesch, Maricopa County Public Defender

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Arizona's Crazy New Insanity Law: What's The Verdict?

By Christopher Johns

The quirks of Arizona's new insanity provisions are mind-boggling if you try to make sense of them. The changes became effective January 1, 1994 and it is the fourth version of an insanity law in Arizona since 1978.

According to a member of the new Psychiatric Review Board there has only been one case so far (from Pima County) under the new statutory scheme for insanity. Compare that with an average of about ten to fifteen "not responsible by reason of insanity" verdicts annually in preceding years.

"I think defense lawyers are holding back," the board member said. "There seems to be a wait and see attitude by the defense bar."

That's contrary to early speculation by such insanity experts as Dr. Jack Potts, Maricopa County's Correctional Health Services Director of Psychiatric Services. According to Dr. Potts, much in the new law could seduce juries. Dr. Potts thinks that juries will like the idea of being able to assign moral guilt and also presume that an offender will get treatment if he/she also is found insane. In other words, the new verdict could result in more insanity acquittals.

The board member may be right in the short run, and Dr. Potts in the long run. Defense lawyers are sometimes a fairly conservative lot when it comes to dealing with new statutory schemes. There's always a learning curve and you've got to be visionary to go out on a limb at your client's expense. The nuances of the law are also formidable--and of course there is the most perplexing question--how can you be *morally* guilty if by definition insanity means an inability to know right from wrong? But that's philosophical or a question of semantics? More on that issue below.

A more practical question is what are the forms of verdict? Have practitioners given it much thought? I don't know the answer so I'm inviting speculation, but this is what occurs to me--maybe the criminal defense bar is missing the nitty-gritty on this one? I say that because Arizona's new law is truly unique. It is patterned after guilty but mentally ill verdicts that many states have adopted (for example, Maryland, Michigan and Alaska).

Legislation in those states is designed to provide the factfinder with an *additional option* to the three

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traditional verdicts of guilty, not guilty, and not guilty by reason of insanity. So, under a typical guilty but mentally ill legislative formulation, if the jury finds a defendant who asserts the insanity defense guilty and not insane, it may alternatively find him guilty but mentally ill at the time of the offense. If the defendant is found guilty but mentally ill, the court may impose any sentence appropriate for the offense, but the defendant is eligible for treatment in prison or a mental hospital while incarcerated.

Basically, proponents of guilty but mentally ill legislation hope to reduce insanity acquittals and provide greater public safety by offering juries a compromise verdict that is supposed to ensure incarceration and treatment for the mentally ill offender. In my opinion, that's a far cry from Arizona's new guilty *except* insane legislation. It's purpose is to eliminate "temporary insanity" as a defense. Period.

How did we get here?

Arizona's guilty except insane statute should probably be called the "Hirsch" law, but it isn't. The enactment is essentially a reaction to three high-profile Arizona insanity cases where Tucson trial lawyer Robert "Bob" Hirsch successfully raised the insanity defense.

* In 1989, a Tucson man, Mark Alan Austin, admitted stabbing his estranged wife, Laura Griffin-Austin, 30 times. Austin claimed and the jury found that he was temporarily insane for the stabbing. He then served six months in jail.

for The Defense

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* In 1982, a Safford man, Bill Gorzenski, recently divorced, overheard his ex-wife making love to another man as he stood outside her window. He killed her with three blasts from a shotgun, but was acquitted by a verdict of not guilty by reason of insanity.

* In 1982, Scottsdale resident Steven Steinberg stabbed his wife twenty-six times while he was sleepwalking, according to the defense. Steinberg claimed no recollection of the crime and was acquitted.

Following the Austin case, Arizona State Senator Patti Noland introduced a bill popularly known as "Laura's law," so called as a reminder of Austin's estranged wife. It failed when first introduced; however, a second version was introduced and passed the next year (the Maricopa County Public Defender Office had some input on the bill by being invited to join some sessions regarding its impact on the county).

The law's purpose

Like guilty but mentally ill statutes, Arizona's guilty except insane (GEI) law is supposed to lessen insanity verdicts. In Arizona, the law is specifically designed to eliminate the defense of "temporary insanity." The law accomplishes most of that end by a laundry list of conditions that, according to the drafters, no longer constitute a defense to criminal behavior. For example, any disease or disorder resulting from voluntary intoxication or impulse control disorder is eliminated as a bona fide defense. Likewise, insanity no longer includes "momentary" or "temporary conditions arising from the pressure of the circumstances." And, the list of conditions is open-ended by containing the phrase "but not limited to."

While the new law basically retains the essence of the traditional M'Naghten test, it is simplified. The single prong of the test now being that a person must be so afflicted by mental disease or defect to not know the "criminal act was wrong."

Legislation favoring this verdict is based on, at least from a defense perspective, the belief that defendants frequently abuse the insanity defense. Most research indicates that view is unfounded. Likewise, research also indicates that insanity acquittees are not extraordinarily violent individuals. Unfortunately, it is trial attorney Hirsch's highly publicized cases that have stereotyped all Arizona insanity acquittees. As most public defenders know, the vast majority of our clients who have a decent insanity defense are mentally ill (in its broadest sense) who are restored to competency and then have no idea what they did when they were off their medication or self-medicated by "street drugs."

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The problems

Stupid Says and Stupid Does!

Before returning to the form of verdict issue, let's just revisit the statute's contradiction in terms: semantics or philosophical? Thinking about this gives me a headache, so the discussion will be short, but tuck it away as an issue that should be considered for appeal. The jury may now find a person "*guilty except insane.*"

But go back to your definitional section of the criminal code and you will see that A.R.S. 13-201 and 202 define guilt as requiring not only a physical act but also a voluntary act performed with a culpable mental state. Presumably one or both of these crime elements are lacking in a truly insane person under the M'Naghten test. In other words, traditional criminal law, as most of us were taught, requires *actus reus* and *mens rea*. The concept of guilt, however, in the new insanity statute tries to or appears to mean only the performance of a prohibited *physical* act--mental state doesn't seem to matter. From a defense lawyer's perspective, the task for any thinking jury will be sobering--confounding--nuts--make little sense--be confusing--on and on and on. In other words, talk about vague!

What Will Verdict Forms Look Like?

Perhaps drawing on the Michigan "guilty but insane" law can best illustrate the form of verdict issue defense lawyers may want to consider as problematic under Arizona's new law. As mentioned, Michigan did not eliminate not guilty by reason of insanity, but instead added another verdict form called "*Guilty But Insane.*" The Michigan legislature did so in 1975.

The Michigan Code of Criminal Procedure provides for four possible verdicts in criminal trials: guilty, not guilty, not guilty by reason of insanity, and guilty but mentally ill. *See* Mich. Stat. Ann. sec. 28.1059.

Under the Michigan act, a defendant may be found not guilty by reason of insanity if he is determined to have been legally insane at the time of the offense. In contrast, a defendant may be found guilty but mentally ill when he is guilty of an offense and it is determined that he was mentally ill rather than legally insane at the time the offense was committed. A defendant found not guilty by reason of insanity undergoes a psychiatric exam and is then either committed or discharged. A defendant found guilty but mentally ill, however, is treated for the present mental illness and also receives a sentence that would be imposed on one simply found "guilty" of the crime (similar to Arizona's scheme of placing an individual under supervision of the Psychiatric Review Board (PSRB)).

Previously, the Arizona jury instruction for insanity read that "*a defendant is not responsible of criminal conduct by reason of insanity if at the time of the conduct the defendant was suffering from such a mental disease or defect as not to know the nature and quality of the act, or, if the defendant did know, the defendant nonetheless did not know the conduct was wrong.*"

Presumably, in Arizona there will be an instruction (I've been unable to find one at the time of this article) that similarly encapsulates the statutory provision that a person may be found guilty except insane. May a defendant also be found *not guilty except insane?* Doesn't the definition of guilt require that? In other words:

Verdict Forms

* Guilty
* Not Guilty
* Guilty except insane
* Not guilty except insane?

A Verdict In Name Only?

And if the jury follows other instructions about act and mental state, won't defense lawyers in effect still be able to argue lack of mental state? In other words, a not guilty without a culpable mental state is the same as an insane?

All of these questions are rhetorical? What they suggest, however, is that practical and constitutional challenges lurk throughout the new insanity law. We may not only have to quibble over semantics, but ultimately challenge the very foundations of the law. Are seeking compromise verdicts a permissible result? Is the definition of insanity nonsensical? Is the statute constitutionally vague? Are there equal protection problems?

The GEI verdicts leaves many unanswered questions for practitioners, and many more problems for our clients who suffer from various forms of mental illness, diseases or defects.

Author's Note: Comments, jury instructions, verdict forms, and ideas on Arizona's insanity defense law are welcome. Ω

How Can a Female Attorney Be Most Effective in the Courtroom?

Karen Ohnemus Lisko, Ph.D.[1]

How can female attorneys be most effective in the courtroom? Conventional wisdom abounds. I once heard an attorney at a CLE seminar advise her colleagues to wear a red suit during opposing counsel's closing argument to create a distraction for the jurors -- presumably what one might call a "modern day Clarence Darrow."[2] Amid all the conventional wisdom, some certainly has merit and some is nothing more than speculation. However, more reliable information exists from legal communication research and post-trial interviews with actual and mock jurors.

This discussion of courtroom effectiveness for female attorneys first addresses the most persuasive element of trial which transcends gender. Following that, we will look at judges' and juries' expectations of women lawyers as well as a review of women lawyers' unique challenges and strengths.

What most influences judges and jury verdicts?

To get a perspective on what really matters, let's talk about *the* major predictor of verdicts overall: the evidence. The evidence supersedes who is on the jury, who is on the bench, and who is delivering the arguments. While all of these factors are important, none of them outweighs the importance of the evidence. What does matter is *how* the evidence is presented.

Whether female or male, the attorney plays the critical role of storyteller and has the charge of weaving the evidence together. Research and jury debriefings confirm that jurors typically make sense of all the evidence by turning it into a story of what they think really happened in the case.[3] The smartest thing an attorney can do is to anticipate that decision-making process and fit the evidence, witnesses, and motivations into a cohesive story. (If holes exist in your story, be aware that jurors are usually more than happy to fill in the gaps for you.)

What do judges and juries expect from women lawyers?

Judges and Juries Aren't that Different.

First, a note about the distinction (or lack thereof) between "judges and juries." When it comes to rendering verdicts, the two are more similar than many people might think. A landmark study conducted by the University of Chicago Jury Project[4] several years ago studied 3,600 criminal trials. After comparing judges' completed questionnaires with actual jury verdicts, the study revealed that the two were in agreement 78% of the time.[5] More recent studies have confirmed these findings. It stands to reason, therefore, that many of the same expectations exist for judges and juries.

What Specific Behaviors Do Judges and Juries Expect?

From my discussions with several hundred actual and mock jurors, I have been repeatedly struck by the fact that their expectations of attorneys are consistent with everyday social conventions. Jurors generally resent rudeness and sarcasm. Jurors expect attorneys to treat witnesses, the judge, and their adversaries with respect. In examination of a witness, jurors typically relate more with the witness than they do with the attorneys or judge. If an attorney is hostile or rude toward a witness, jurors usually resent the attorney. However, when witnesses are rude back to the offending attorney, jurors will then turn their criticism against the witness.

Within the purview of social expectations, we often hear jurors voice a subtle double standard toward female attorneys compared with their male counterparts. The general rule of thumb for appropriate courtroom "etiquette" is that it reflects societal norms. Jurors expect female attorneys to be professional and polite. The podium thumping style demonstrated on Perry Mason generally falls flat in the modern-day courtroom. Jurors often deride a female attorney for being "hard" while the same behavior from a male may be defined as "assertive." To the extent that this disparate perception changes outside the courtroom in coming years, it is likely jurors will bring that changed perception to the courtroom as well.

Jurors expect female attorneys who are present at counsel table to take an active role at trial. For example, in an out-of-state sexual harassment case where a female defense attorney was a silent presence at counsel table, jurors later expressed annoyance at what they called an "obvious attempt to manipulate pro-female sentiment" for the defendant. Neither is the defendant's act of discrimination against the inactive woman attorney by giving her a token role lost on jurors. (The same is true, incidentally, when local counsel is a mere silent presence rather an active participant.)

Most importantly, judges and juries expect attorneys to be prepared. When we conduct post-trial interviews with jurors in states where such practices are allowed, we always ask how each attorney could have made his or her case presentation more effective. Jurors repeatedly comment that attorneys need to be more organized in their openings and closings and avoid

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rambling. By the same token, many jurors are dismayed by (and frequently resentful of) what they term the "unnecessary redundancy" of witnesses testifying to the same thing. Certainly, repetition sometimes has its place. In those instances, however, it becomes important to set the stage in opening statements for *why* the redundancy is necessary.

What unique challenges do women lawyers face and what unique strengths do they possess?

So far, this article has focused on the fact that the most important persuasive elements in the courtroom transcend attorney gender. However, there do exist patterns of communication and demeanor that are often unique to women lawyers. Such patterns present themselves both as challenges and strengths.

Female Lawyers' Challenges.

First, the challenges. Frequently, women of any profession are more prone to use something called "powerless language".[6] (Years ago, the term used was "women's language"[7], before more enlightened research linked the communication behavior to social status. However, in the past, women's social status has been lower.) The importance of "powerless language" rests in the fact that extensive research has linked this behavior with lowered credibility in the courtroom.[8] Lawyers and witnesses are perceived to be less credible when they speak quietly, speak slowly, use frequent fillers, such as "ums" and "uhs" and use intensifiers, such as "sort of", and "very". Women lawyers who end their sentences with an upward inflection also appear more uncertain.

One element that I just mentioned -- rate of speech -- surprises many experienced attorneys. Many attorneys erroneously believe that speaking slowly enhances credibility. The opposite is true. Speaking more rapidly (without losing articulateness) keeps jurors' attention more and often increases the speaker's dynamism. Women attorneys should speak in their loudest, most pleasant voice at a more energetic rate. Jurors rate attorneys who use a conversational, energetic speaking style as significantly more credible than attorneys who use more erudite, somber styles as are so often exhibited in the courtroom.

Female Lawyers' Strengths.

Research shows that, in general, women are more adept than men in using listening skills and in reading nonverbal behavior. Both skills are especially helpful during jury selection and witness examination. Being an effective listener is inherently linked with being an effective questioner. If you sense some underlying concern on the part of the potential juror or witness, probe for that concern (provided it doesn't help the other side more).

Conclusion

While evidence is by far the strongest predictor of verdicts, the manner in which that evidence is organized and presented is clearly important. Female attorneys who are most effective are ones who understand that an important element of persuasion boils down to making judges' and jury's *perceptions* fit counsel's presentation of the evidence. By making use of effective communication techniques that have been proven persuasive, you'll be able to ensure that your case is at its strongest.

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[1]Dr. Karen Ohnemus Lisko is Research Administrator for Tsongas Associates, a national trial consulting firm based in Portland, Oregon. In that capacity, she has primary responsibility for the design of pretrial research that includes community attitude surveys, change of venue surveys, and trial simulations. Dr. Lisko has debriefed numerous mock and actual juries across the country. She has also provided expert testimony on the issues of jury bias and jury misconduct.

Dr. Lisko also provides communication services, often in conjunction with pretrial research. These services include witness preparation for deposition and for trial, case strategy analysis, and consultation on opening statements and closing arguments. She lectures frequently to lawyers' groups and at bar association meetings.

Dr. Lisko is an Adjunct Professor of Law at the Northwestern School of Law in Portland, Oregon. She is also News Editor for the quarterly publication of the American Society of Trial Consultants.

Dr. Lisko received a doctorate in Communication Studies at The University of Kansas. It is the first doctorate of its kind to emphasize trial consulting techniques.

[2]The story goes that Clarence Darrow once inserted a wire into a cigar, smoked the cigar during opposing counsel's closing and mesmerized the jurors as they watched for the ashes that were clinging to the hidden wire to fall. The jurors supposedly heard none of the other side's closing as a result and voted in favor of Darrow's client.

[3]Bennett & Feldman. (1981). *Reconstructing Reality in the Courtroom: Justice and Judgment in American Culture*. New Brunswick: Rutgers University Press.

[4]Kalven, Jr., H. & Zeisel, H. (1966). *The American Jury*. Boston: Little, Brown.

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[5]The remaining 22% of the time, juries were typically more lenient. One social scientist accounted for this disparity by theorizing that judges can be more rule-oriented than juries.

[6]O'Barr, M.M. (1982). *Linguistic Evidence: Language, Power, and Strategy in the Courtroom.* New York: Academic Press.

[7]O'Barr, W.M. & Atkins, B.K. (1980). "Women's language or "powerless language"? in Eds. Sally McConnell-Ginet, Ruth Borker and Nelly Furman, *Women and Language in Literature and Society*. New York: Praeger Publishers, 93-110.

[8]O'Barr, W.M. op cit. See also Lisko, K.O. (1991). *Jurors' Perceptions of Witness Credibility as a Function of Linguistic and Nonverbal Power.* Unpublished doctoral dissertation, The University of Kansas.

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Jodi Weisberg Named President of AWLA

Jodi Weisberg, an attorney in our Mental Health Division since 1988, has been elected as the next president of the Arizona Women Lawyers Association (AWLA). Ms. Weisberg will assume the presidency in November and she will serve in that position for a one-year term.

Ms. Weisberg is the first public defender to hold the position and one of the few public attorneys to be named president.

AWLA currently has approximately 500 members in Maricopa County. The Association is committed to eliminating gender bias in the legal field, promoting women within the profession, and supporting women in obtaining positions on the bench, on commissions, and/or on various boards.

The group conducts monthly luncheon meetings at the downtown Arizona Club. Ms. Weisberg has noted a special interest in seeing the participation of more public attorneys (both male and female) so that they are fully represented in the organization. Dean Trebesch, Maricopa County Public Defender, encourages attorneys from our office to consider participating in the Association.

If anyone has any questions about or comments on the Association, please contact Ms. Weisberg at 267-5856. Ω

Arizona Advance Reports

Volume 173

State v. Salazar,
173 Ariz. Adv. Rep. 3 (Div. One, 09/06/94)
Trial Judge Frank T. Galati
Appeal Attorney James H. Kemper

Defendant was convicted by a jury of attempted child molestation. The Arizona Court of Appeals reversed because of improperly admitted prior sexual conduct crimes under Rule 404(b).

The defendant allegedly attempted to molest his 13-year-old niece. At trial the state offered so-called "propensity evidence" through Robert Emmerick. Emmerick's testimony has previously be discredited in *State v. Varela*, 873 P.2d 657 (App. 1993); however, this is *not* the grounds for reversal. The state called three witnesses, all of whom described in brutal detail prior sexual assaults by the defendant that they allegedly suffered as many as 20 years ago.

In an opinion by Judge Fidel, the court found first that the propensity exception in *McFarlin* and *Treadaway* had been taken too far and that the restraints on admission required by those cases had been eroded. *McFarlin* provided that propensity evidence should be limited to *similar acts near in time* and *Treadaway* requires that expert testimony must support its admission. Both *McFarlin* and *Treadaway* were decided as hurdles to unrestrained admission of "propensity evidence."

Courts make only a "threshold determination" when they allow evidence in under *McFarlin* and *Treadaway*. The court must still balance, in whole or in part, whether the evidence is admissible under Rule 403. In the case of prior bad acts, the onus of showing that prejudice is *over-balanced by need* is on the government. The trial court should use a three-part inquiry under Rule 403: 1) should the evidence be admissible in any form or is it too prejudicial; 2) what restrictions should be placed in jury instructions, and 3) can the evidence be narrowed or tailored to avoid unnecessary prejudice?

The case is remanded for a new trial.

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State v. Stevens,
173 Ariz. Adv. Rep. 74 (Division Two, 08/31/94)
Trial Judge Frank Dawley, Pro Tempore

Defendant was convicted of DUI. Stopped for speeding, defendant was placed in handcuffs because he appeared angry. The arresting officers observed signs of intoxication in defendant and decided to perform field sobriety tests. Because of the handcuffs, the only test performed was the HGN. At the station defendant consented to an intoxilyzer test.

Defendant moved to suppress the results of both tests. Defendant was given the HGN with contact lenses on and called an expert witness showing that leaving them in could produce erroneous results. Defendant's motion was denied.

On appeal, the court agrees that the HGN results should have been suppressed. Insufficient foundation was found at the trial. The error, however, is harmless primarily because it was introduced to show a neurological impairment, one cause of which may be alcohol. It was not introduced for BAC results.

As for the breath test, in this case the arresting officer could not establish the proper observation under A.R.S. 28-695(A)(3), and the results were not within .02 alcohol concentration of one another. There is no error, however, because the arresting officer did rely on a checklist in effect *at the time* and defendant did not specifically object as to the mouth alcohol but to the proper waiting period. The motion to suppress was properly denied.

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State v. Luatzenheiser,
174 Ariz. Adv. Rep. 3 (Sup. Ct., 09/20/94)
Trial Judge Brian Ishikawa
Appeal by Lawrence S. Matthew, MCPD

Defendant was charged with DUI and his first trial ended in a hung jury. A second trial started on December 30, 1991, and the case was sent to the jury at 3:33 p.m. on December 31st.

Less than an hour later, the foreman announced that a guilty verdict had been reached. Defense counsel polled the jury, and one juror indicated that guilty was *not* her true verdict--not once but twice in response to the clerk's inquiry. The trial judge, a pro tem, asked the foreman whether more deliberations would help. He said "no"; however, the judge encouraged him and the jurors to return to the jury room for further deliberation. No cautionary instructions were given or requested. No more than 25 minutes later a unanimous verdict was reached, finding the defendant guilty.

On appeal, defendant claims that the trial court coerced a verdict and that it is fundamental error (failure to object not fatal). The court of appeals, with one dissent, previously affirmed the verdict. The issue for the court is whether this was a fair trial at the hands of an independent jury---free from intimidation or undue pressure.

The court must use the "totality of the circumstances" test to determine whether there was a fair trial. Here, caution should probably have been exercised from the first given that the trial took place on New Year's Eve. The polling of the jurors, although no one's fault, resulted in singling out one juror. The jury foremen indicated that a verdict could not be reached--still he and the jurors were ordered to continue trying in "the absence of any cautionary instructions."

The more problematic issue is defense counsel's failure to object since that results in waiver. Absent a finding of fundamental error, failure to raise an issue at trial . . . waives the right to raise the issue on appeal. "Fundamental error" is that 'which goes to the foundation of the case, or which takes from a party a right essential to the case.'" Here the court cannot say that what happened did not significantly affect the verdict. Despite defense counsel's lack of an objection, the court also has a role to play in ensuring an unfettered and fair jury. Reversed and remanded for new trial. Opinion by Justice Zlaket.

Justice Corcoran ***specially concurring*** that the *totality of circumstances* is proper test, however, disagreeing that polling procedure contributes to the effect of coercion since it is established by procedure.

Justice Martone ***dissents*** on grounds that procedure did not result in jury coercion.

State v. Gates,
174 Ariz. Adv. Rep. 30 (Div. I, 09/27/94)
Trial Judge Gregory H. Martin
Appeal by Stephen R. Collins, MCPD

Defendant was convicted of one count of sexual exploitation of a minor and sentenced to 12 years flat based on the charge that he made three videotapes in which minors were engaged in sexual conduct.

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Defendant set up a video camera and invited young girls to change clothes in a room where it was located. He was not present but left the camera running. Another incident involved filming for a few seconds a child taking a shower, and the last tape contained non-sexual pictures from common magazines.

Defendant was charged with *knowingly recording, filming, photographing, developing or duplicating any visual print medium in which minors are engaged in sexual conduct.* Sexual conduct is, among other things, defined as lewd exhibition of the genitals, pubic or rectal areas of any person. The issue here is whether the minors in the videos were engaged in such conduct.

The state argues that defendant's intent is important, but such an interpretation would criminalize "errant" thoughts. Here, laws at a minimum should suggest sexual suggestiveness. The defendant's intent is irrelevant. The court reverses on insufficiency of the evidence.

State v. Munoz,
174 Ariz. Adv. Rep. 36, (Div. II, 09/27/94)
Trial Judge Bernardo P. Velasco

Four police officers routinely used fingerprint tape to apply to the noses of suspects to obtain white powder from around their noses during routine traffic stops. The practice was approved by supervisors.

Because the area in which these officers worked was overwhelmingly Hispanic, 95% of those persons arrested were Hispanic. The trial court dismissed 15 cases because it found the practice unconstitutionally discriminatory. The state appealed.

A facially neutral law can be applied in a discriminatory manner--so as to constitute a violation of an equal protection of the law. The defense, however, must show that others similarly situated are not subject to the same technique for an impermissible motive.

Here the trial court could infer such a result because the technique was only used in the Hispanic part of town for almost a year. Impermissible motive can be proven circumstantially as well as by direct admission. The trial court's ruling is affirmed. Ω

September Jury Trials

August 23

Michelle Allen: Client charged with trafficking in stolen property and theft (with priors and while on parole). Investigator M. Fusselman. Trial before Judge O'Melia ended August 24. Client found guilty of trafficking in stolen property charge; theft dismissed. Prosecutor L. Schroeder.

August 29

Susan Bagwell: Client charged with child abuse. Trial before Judge Hertzberg ended September 29. Client found guilty. Prosecutor J. Hoag.

Larry Grant: Client charged with two counts of attempted murder. Investigator R. Barwick. Trial before Judge Bolton ended September 23 with a hung jury on count one; guilty of count two. Prosecutor H. Schwartz.

August 30

Wesley Peterson: Client charged with three counts of child molestation. Investigator V. Dew. Trial before Judge Barker ended September 7 with a hung jury. Prosecutor A. Williams.

Mara Siegel: Client charged with attempted murder. Investigator J. Allard. Trial before Judge Bolton ended September 22. Client found guilty. Prosecutor H. Schwartz.

August 31

Daphne Budge: Client charged with murder in the first degree and attempted murder. Trial before Judge Ryan ended September 15. Client found guilty of murder in the second degree and **not guilty** of attempted murder. Prosecutor L. Ruiz.

Elizabeth Langford: Client charged with three counts of custodial interference. Investigator V. Dew. Bench trial before Judge Sheldon ended September 1 with a **judgment of acquittal** on counts one and two; **not guilty** of count three. Prosecutor G. McKay.

September 1

Jeff Reeves: Client charged with armed robbery. Trial before Judge Dougherty ended September 12. Client found **not guilty**. Prosecutor R. Wakefield.

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September 6

Robert Corbitt: Client charged with aggravated assault. Trial before Judge Portley ended September 12. Client found guilty. Prosecutor M. O'Hair.

September 8

Peter Claussen: Client charged with two counts of armed robbery and three counts of aggravated assault (dangerous). Trial before Judge Seidel ended September 19. Client found guilty. Prosecutor C. Bailey.

September 9

Nancy Johnson: Client charged with criminal damage and criminal trespass. Investigator D. Erb. Bench trial before Judge Dougherty ended September 9. Client found guilty of criminal damage; criminal trespass charge dismissed. Prosecutor D. Patton.

September 12

Dan Carrion: Client charged with three counts of aggravated assault (dangerous) and two counts of endangerment (dangerous). Trial before Judge Gerst ended September 15. Client found guilty of three counts of lesser included disorderly conduct and **not guilty** of two counts of endangerment. Prosecutor T. Duax.

Rebecca Donohue: Client charged with aggravated DUI. Trial before Judge Hauser ended September 14. Client found guilty. Prosecutor T. Doran.

Renee Ducharme (with Russ Born): Client charged with aggravated assault. Trial before Judge Wilkinson ended September 12. Client found guilty. Prosecutor T. Clarke.

September 13

Robert Ellig: Client charged with possession of dangerous drugs and possession of marijuana. Investigator N. Jones. Trial before Judge Dougherty ended September 20. Client found guilty. Prosecutor A. Davidon.

Joseph Stazzone: Client charged with aggravated assault (dangerous). Trial before Judge Dann ended September 15. Client found guilty. Prosecutor P. Howe.

James Wilson: Client charged with robbery. Investigator D. Erb. Trial before Judge Rogers ended September 20. Client found guilty. Prosecutor L. Krabbe.

September 14

Greg Parzych: Client charged with two counts of DUI, possession of drug paraphernalia, and possession of dangerous drugs. Investigator G. Beatty. Trial before Judge Skelly ended September 15. Client found guilty of one count of DUI and possession of drug paraphernalia; hung jury on one count of DUI and possession of dangerous drugs. Prosecutor A. Jennings.

Charlie Vogel: Client charged with sexual abuse. Investigator P. Kasieta. Trial before Judge Hauser ended September 14. Client found guilty. Prosecutor D. Macias.

September 15

Ray Vaca: Client charged with possession of stolen vehicle. Investigator D. Moller. Trial before Judge Skelly ended September 19. Client found guilty. Prosecutor M. Vincent.

September 19

Paul Lerner: Client charged with nine counts of kidnapping, sexual assault and sexual abuse. Trial before Judge Portley ended September 23. Client found **not guilty** on one count of kidnapping, 3 counts of sexual assault and sexual abuse; hung jury on other counts. Prosecutor R. Campos.

Scott Wolfram: Client charged with two aggravated assaults (felonies). In exchange for a waiver on a jury trial, defendant was tried on two misdemeanor assaults. Bench trial before Judge Wilkinson ended September 19. Client found guilty of two misdemeanors. Prosecutor K. Rapp.

September 20

Michael Hruby: Client charged with armed robbery (dangerous). Investigator N. Jones. Trial before Judge Dougherty ended September 26 with a hung jury. Prosecutor R. Puchek.

Jeanne Steiner: Client charged with possession of dangerous drugs. Trial before Judge Colosi ended September 26. Client found **not guilty**. Prosecutor J. Bernstein.

John Taradash: Client charged with sexual assault and kidnapping. Investigator J. Castro. Trial before Judge Wilkinson ended September 27. Client found **not guilty**. Prosecutor J. Beatty.

(cont. on pg. 10) ☞

September 22

Barbara Spencer: Client charged with aggravated DUI. Trial before Judge Seidel ended September 30. Client found guilty. Prosecutor P. Hearn.

September 26

Jerry Hernandez: Client charged with two counts of sexual assault and sexual abuse (dangerous crime against children). Investigator V. Dew. Trial before Judge Portley ended September 29. Client found **not guilty**. Prosecutor A. Williams.

Jeff Reeves: Client charged with aggravated assault. Investigator H. Brown. Trial before Judge Dougherty ended September 27. Client found guilty. Prosecutor D. Palmer.

September 27

Dan Carrion: Client charged with aggravated assault. Investigator R. Barwick. Trial before Judge Colosi ended October 3. Client found guilty. Prosecutor T. Duax.

Mara Siegel: Client charged with burglary and aggravated assault. Trial before Judge O'Toole ended September 30. Client found guilty of disorderly conduct and burglary. Prosecutor R. Puchek.

September 28

Wesley Peterson: Client charged with aggravated assault. Trial before Judge Kaufman ended September 30. Client found **not guilty**. Prosecutor G. McKay.

Genii Rogers: Client charged with two counts of aggravated assault. Investigator N. Jones. Trial before Judge Gerst ended September 30. Client found **not guilty**. Prosecutor M. Brnovich.

September 30

Doug Gerlach: Client charged with DUI. Trial before Judge Johnson (East Mesa Justice Court) ended September 30. Client found guilty. Prosecutor P. Gann. Ω

Bulletin Board

Personnel Profiles

New Staff:

Donna Brainich, Saundra Roybal, and **Patty Winter** started as clerical trainees in our office. Ms. Brainich, who has prior reception/record-keeping experience, and Ms. Roybal will work in our downtown reception/records area. Ms. Winter, who has been studying computers through the Job Training Partnership Act, will replace Maria Doran in our Mesa office.

Michelle Fleming, Randi Gillett, and **Stephanie Valenzuela** are our new legal secretaries.

Ms. Fleming, who was formerly employed in a clerical position at Begam, Lewis, Marks, Wolfe and Dasse, has completed the legal secretarial program at the Academy of Business College. Ms. Fleming started October 11 in Trial Group D.

Ms. Gillett, who worked in our office approximately five years ago, has been working for attorney Tom Gorman. On October 24 she rejoined our staff, going to Trial Group A as a replacement Irene Jones.

Ms. Valenzuela comes to our office after five years of employment with the Arizona Consortium for Traffic Safety where she worked closely with the Justice Courts, scheduling traffic safety classes. Prior to that she was employed by the Phoenix Municipal Court and in secretarial positions with private attorneys. Ms. Valenzuela started on October 11 in Trial Group D in our pilot File Manager program. In this new position, Ms. Valenzuela will not be assigned to specific attorneys, but will handle the group's DFM functions and prepare all of the Justice Court calendars.

Speakers Bureau

Paul Lerner, trial attorney in Group C, addressed an ASU Criminal Justice class on October 13. Mr. Lerner discussed the role of the Public Defender's Office and the plea bargaining process. Ω

Arizona Department of Corrections

Profile of a Typical Female Prison Inmate -- June 30, 1993

As of June 30, 1993, 5.9% of inmates incarcerated in Arizona's prison system were females. The typical female inmate has the following characteristics:

- Caucasian 49.4%
- Age group 30-34 . . . . . 24.3%
- Single and never married 39.0%
- No dependents 27.7%
- Some high school but no diploma 57.8%
- Sentenced in Maricopa County 65.1%
- Committed for a drug-related crime 37.5%
- A maximum sentence of five years 19.3%
- One or more prior adult felony convictions 59.3%
- Sentenced for a Class 4 felony 28.4%
- Sentences as Non-Dangerous and Non-Repetitive 78.1%
- History of drug and alcohol abuse 49.9%

According to the profile above, the typical female inmate is a drug and alcohol-abusing, single, white offender in her early thirties with no dependents, who is a high school drop-out convicted in Maricopa County of a Class 4 offense which is a drug-related crime carrying a five-year sentence, who has a prior adult felony conviction but is nonetheless sentenced as a non-dangerous and non-repetitive offender.

Arizona Department of Corrections

Profile of a Typical Male Prison Inmate -- June 30, 1993

As of June 30, 1993, 94.1% of inmates incarcerated in Arizona's prison system were males. The typical male inmate has the following characteristics:

- Caucasian 46.9%
- Age group 30-34 . . . . . 20.5%
- Single and never married 53.5%
- No dependents 41.7%
- Some high school but no diploma 61.6%
- Sentenced in Maricopa County 58.8%
- Committed for a violent or sex crime 40.4%
- A maximum sentence of five years 15.4%
- One or more prior adult felony convictions 78.5%
- Sentenced for a Class 3 felony 34.3%
- Sentenced as Non-Dangerous and Non-Repetitive 65.6%
- History of drug and alcohol abuse 47.9%

According to the profile above, the typical male inmate is a drug and alcohol-abusing, single, white offender in his early thirties with no dependents, who is a high school drop-out convicted in Maricopa County of a Class 3 offense which is a violent or sex crime carrying a five-year sentence, who has a prior adult felony conviction but is nonetheless sentenced as a non-dangerous and non-repetitive offender. Typically, such an offender has either been in prison before, is sentenced as a probation violator, or has an extensive juvenile record.

While only 26.6% of Arizona inmates are sentenced for drug or alcohol-related offenses, it is important to note that approximately 74.8% have a history of drug or heavy alcohol use. Thus many inmates with histories of substance abuse are sentenced for other types of crimes, such as burglary, theft, robbery or aggravated assault.